

# EXHIBIT 4

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

KIM EMBRY, AN INDIVIDUAL,  
Plaintiff,  
vs. CASE NO. RG20057491  
B&G FOODS NORTH AMERICA, INC.,  
A DELAWARE CORP., RALPH'S  
GROCERY COMPANY, AN OHIO CORP.  
Defendants.

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DEPOSITION OF KIM EMBRY  
APPEARING REMOTELY FROM  
San Francisco, California  
Friday, November 13, 2020

Stenographically Reported by: Ashley Soevyn,  
CSR No. 12019  
APPEARING REMOTELY FROM MARIN COUNTY, CALIFORNIA  
Magna Job No. 663115  
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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 COUNTY OF ALAMEDA  
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A DELAWARE CORP., RALPH'S  
8 GROCERY COMPANY, AN OHIO CORP.  
9 Defendants.

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13 Deposition via video conference of  
14 KIM EMBRY taken on behalf of defendants, with all  
15 parties appearing remotely beginning at 10:06 a.m.  
16 and ending at 12:40 p.m. on Friday, November 13,  
17 2020, before ASHLEY SOEVYN, Certified Shorthand  
18 Reporter No. 12019.  
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2

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23       Also Remotely Present: Nick Peruto, Videographer

24       Cameron Baker, paralegal, BraunHagey & Borden

25       Valerie Garcia, paralegal, Glick Law Group

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1 A Not really. I have a Costco membership. 11:33:01

2 I can't remember the last time I've been.

3 Q Got it. So at issue in this lawsuit  
4 and -- and many of your other notices of violation  
5 is a chemical called acrylamide. What is 11:33:22  
6 acrylamide?

7 A Acrylamide --

8 MR. GLICK: Objection. Hold on. Hold  
9 on. Objection. Calls for expert testimony, lacks  
10 foundation. 11:33:33

11 THE WITNESS: I do know a little bit  
12 about acrylamide. It is a chemical found in foods.  
13 When cooked -- baked at really high temperatures and  
14 then once it's ingested in the human body, it  
15 actually becomes a carcinogen. 11:33:48

16 BY MR. KWASNIEWSKI:

17 Q And -- and you mentioned it's formed in  
18 foods when they're -- when they're baked or fried,  
19 you said?

20 A To my understanding, I -- when it's at a 11:33:55  
21 very high temperature, baked and fried, that's when  
22 it forms.

23 Q And you understand that it forms in -- in  
24 all manners of food when they're treated that way,  
25 like if you fry fish or bake it or if you roast 11:34:12

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1 conclusion, vague and ambiguous, lacks foundation. 11:59:17

2 BY MR. KWASNIEWSKI:

3 Q You can answer, Ms. Embry, if you can.

4 A I -- actually, I don't know the answer to  
5 this, so I would say no. 11:59:37

6 Q Okay. Earlier we talked a little bit  
7 about your research into acrylamide. I want to get  
8 a bit more specific now.

9 Have you read any scientific study about  
10 whether the cookie cakes at issue in this lawsuit 11:59:58  
11 cause cancer?

12 A No.

13 Q What about any study that the cookie  
14 cakes cause birth defects?

15 A No. 12:00:09

16 Q Are you aware of any person who has ever  
17 contracted cancer because he ate these cookie cakes?

18 A No.

19 Q Or any person who has had a birth defect  
20 because he ate these cookie cakes or she? 12:00:29

21 A No.

22 Q So your goal in bringing this lawsuit or  
23 at least one goal is to get warnings on these  
24 products, correct?

25 A Yes. 12:00:56

1 Q But you wouldn't want B&G Foods to put a 12:00:59  
2 warning on its products that was false, would you?

3 A No.

4 MR. GLICK: Vague and ambiguous.

5 BY MR. KWASNIEWSKI:

12:01:09

6 Q Now, you just said that you're not aware  
7 of any research or study that the cookie cakes cause  
8 cancer but you still want B&G Foods to put a warning  
9 on its product which says that they do; is that  
10 right? 12:01:36

11 MR. GLICK: Objection. Argumentative,  
12 lacks foundation, calls for a legal conclusion,  
13 calls for expert testimony.

14 THE WITNESS: My knowledge is that the  
15 cookies have acrylamide in them. We're not going 12:01:48  
16 after the cookie itself. We're going after the  
17 chemical that's in them.

18 BY MR. KWASNIEWSKI:

19 Q Okay. But you don't know whether the  
20 cookie cakes themselves could ever cause cancer in 12:01:58  
21 anyone?

22 MR. GLICK: Same objections.

23 THE WITNESS: I mean, we could say that  
24 about a number of different products, that's why  
25 we're looking at what the make up is of the product. 12:02:13

1 So the chemical that's in there is what causes 12:02:15  
2 cancer, just like a cigarette. The wrapper of a  
3 cigarette doesn't cause cancer, but what the  
4 chemicals are inside is what do. That's why people  
5 went after big cigarette companies. 12:02:27

6 BY MR. KWASNIEWSKI:

7 Q Got it. So do I understand you to be  
8 suggesting that cookie cakes are as bad for you as  
9 cigarettes?

10 A That's not what I -- 12:02:36

11 MR. GLICK: Hold on. Hold on.

12 Objection. Calls for expert testimony, lacks  
13 foundation, argumentative. Go ahead.

14 THE WITNESS: That's not --

15 BY MR. KWASNIEWSKI: 12:02:47

16 Q You can answer the question.

17 A No.

18 Q And you said before that you're not aware  
19 of anyone who has ever contracted cancer because  
20 they ate cookie cakes, right? 12:02:58

21 A Not cookie cakes, no.

22 Q Did you specifically do any research  
23 before you filed this complaint regarding how often  
24 people eat cookie cakes?

25 A I did not do research, no. 12:03:17

1 Q Do you have an understanding, apart from 12:03:20  
2 any discussions you may have had with your  
3 attorneys, about how many cookie cakes a person  
4 would have to eat to be exposed to a dangerous level  
5 of acrylamide? 12:03:33

6 MR. GLICK: Objection. Calls for expert 12:03:47  
7 testimony and calls for attorney-client  
8 communications, and although he did caveat that to  
9 say apart from our communications, do not reveal in  
10 answering the question anything that might be  
11 protected by the attorney-client privilege.

12 THE WITNESS: Could you repeat the  
13 question?

14 MR. KWASNIEWSKI: Sure. Madam Court  
15 Reporter, would you mind reading it back. 12:03:57

16 THE REPORTER: (Record read.) Do you  
17 have an understanding apart from any discussions you  
18 may have had with your attorneys about how many  
19 cookie cakes a person would have to eat to be  
20 exposed to a dangerous level of acrylamide? 12:04:18

21 THE WITNESS: No, that's where I would  
22 trust an expert's opinion.

23 BY MR. KWASNIEWSKI:

24 Q So let's talk about the co-defendant, my  
25 other client, which is Ralph's Grocery Company. Why 12:04:26

1                   I, the undersigned, a Certified Shorthand  
2 Reporter of the State of California, do hereby  
3 certify:

4                   That the foregoing proceedings were taken  
5 before me at the time and place herein set forth;  
6 that any witnesses in the foregoing proceedings,  
7 prior to testifying, were duly sworn; that a record  
8 of the proceedings was made by me using machine  
9 shorthand, which was thereafter transcribed under my  
10 direction; further, that the foregoing is a true  
11 record of the testimony given.

12                  I further certify I am neither financially  
13 interested in the action nor a relative or employee  
14 of any attorney or party to this action.

15                  IN WITNESS WHEREOF, I have this November  
16 30, 2020 subscribed my name.

17

18

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20

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21 ASHLEY SOEVYN

22 CSR No. 12019

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